

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0002P

Use Tax

Calendar Years 1995, 1996, and 1997

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer has manufacturing plants in Indiana, out of state, and out of country and is privately held. Taxpayer was previously audited on May 24, 1996 and remitted some use tax. At audit, it was determined that the taxpayer failed to self assess and remit use tax for clearly taxable items, some of which are similar to those assessed in a prior audit.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states the underpayment of use tax on purchases was unintentional and the result of errors made in the normal course of business operations.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The taxpayer was previously audited with primarily the same issues. Taxpayer failed to self assess and remit use tax on one hundred percent of its purchases and has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer's protest is denied.